

Attorney Docket # - 10004229-1

**Remarks**

Claims 1-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Jewell (U.S.P.N. 5,859,864). Claims 1-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Lebby, *et al.* (U.S.P.N. 5,848,086).

**35 U.S.C. §102(b) – claims 1-32**

Claims 1-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Jewell (U.S.P.N. 5,859,864).

Jewell discloses a VCSEL having lattice mismatched layers in the vertical dimension. The mismatch is accommodated by transition layers (col. 11, line 59 to col. 12, line 67).

In distinct contrast to Jewell, the present invention teaches including a non-planar layer having a textured surface (page 7, lines 3-4). This surface roughness is propagated through subsequent layers allowing the light emission property to vary (page 7, lines 13-15). Nowhere does Jewell teach or suggest that a textured surface be included in the device structure.

Claims 1 and 2 have been deleted. The limitations of claim 1 have been incorporated into claim 3. Claim 3 now recites “a layer having a non-planar surface within the device structure.” Claim 3 is believed to be patentable. Claims 4-27 are believed patentable based on the allowability of claim 3. Independent claims 28 and 30-32 now recite “a layer having a textured surface.” Independent claims 28, 30, 31, and 32 are believed to be patentable. Claim 29 is believed patentable based on the allowability of claim 28. No new matter is being introduced with this amendment.

**35 U.S.C. §102(b) – claims 1-32**

Claims 1-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Lebby, *et al.* (U.S.P.N. 5,848,086).

Lebby, *et al.* discloses a VCSEL having a first stack of distributed Bragg reflectors disposed on a surface of a semiconductor substrate. The substrate includes a dot pattern to define the lasing surface of the VCSEL (col. 6, lines 46-48).

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In distinct contrast to Lebby, *et al.*, the present invention teaches including a non-planar layer having a textured surface (page 7, lines 3-4). This surface roughness is propagated through subsequent layers allowing the light emission property to vary (page 7, lines 13-15). Nowhere does Lebby, *et al.* teach or suggest that a textured surface be included in the device structure.

Claims 1 and 2 have been deleted. The limitations of claim 1 have been incorporated into claim 3. Claim 3 now recites "a layer having a non-planar surface within the device structure." Claim 3 is believed to be patentable. Claims 4-27 are believed patentable based on the allowability of claim 3. Independent claims 28 and 30-32 now recite "a layer having a textured surface." Independent claims 28, 30, 31, and 32 are believed to be patentable. Claim 29 is believed patentable based on the allowability of claim 28. No new matter is being introduced with this amendment.

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**Conclusion**

If the Examiner has any further questions or would like to discuss this application in more detail, he is invited to call the applicants' agent at the telephone number given below. The applicants respectfully suggest that the claims presently in the application are distinct over the prior art and that the application is now in condition for allowance. Accordingly, the applicants solicit favorable action.

Respectfully submitted,

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